

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**MARINE CORPS LEAGUE #471, INC.
DOCKET NO. 29-2004-0138**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND PROPOSED DEPARTMENTAL ORDER**

An administrative hearing was held on Wednesday, June 2, 2004 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Fort Miami Detachment Marine Corps League, Inc., was represented by Attorney Robert D. McMahan, 2901 Ohio Blvd. Suite 232, Terre Haute, Indiana 47803. Attorney Doug Klitzke appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-21.5 et seq., evidence was submitted, and testimony given. The Department maintains a record of the proceedings. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Proposed Departmental Order.

REASON FOR HEARING

As a result of an investigation conducted on August 22, 2003, by the Criminal Investigation Division of the Indiana Department of Revenue, it was determined that the Petitioner was in violation of provisions of the Indiana Charity Gaming laws. Petitioner failed to protest within the statutorily prescribed time. See IC 4-32-8-1. Petitioner received a letter dated December 15, 2003 which stated "The Department hereby suspends the charity gaming license of Joseph A. Bray Det. #471, Marine Corps League for one (1) year effective with the receipt of this decision." The Petitioner requested a hearing in order to determine the extent of its suspension.

FINDINGS OF FACTS

- 1) The Criminal Investigation Division of the Indiana Department of Revenue conducted an investigation of the Petitioner on August 22, 2003. It was determined that the Petitioner was in violation of provisions of the Indiana Charity Gaming laws.
- 2) On December 15, 2003 the Department issued a letter outlining civil penalties and a suspension based upon the August 22, 2003 investigation. (Department's Exhibit 4).
- 3) The December 15, 2003 letter was addressed to Petitioner and mailed via certified mail to 3006 N. 16th Street, Terre Haute, Indiana 47804.

- 4) The letter was delivered and signed for on December 30, 2003 by Sherry Budd an "Operator" listed on Petitioner's CG-13PT.
- 5) The Petitioner had and continues to have three separate addresses.
- 6) The Petitioner's legal address and offices are located at 1563 Elizabeth Ave, Terre Haute, Indiana 47804. (Record at 17 and 32).
- 7) Petitioner conducts bingo at 7339 N. Clinton Road, Terre Haute, Indiana 47805. (Record at 10).
- 8) Petitioner's hall, club, and bar are located at 3006 N. 16th Street, Terre Haute, Indiana 47804. (Record at 32).
- 9) The 3006 N. 16th Street address in Terre Haute is where the Petitioner was licensed to sell pull tabs, tip boards, and punchboards only. (Department's exhibit 1).
- 10) The Department's witness stated at hearing that, "the [Department's] letter was sent to the location where the violations took place." (Record at 16).
- 11) In its letter of December 15, 2003 the Department stated, "The fact that Marine Corps League #471 continues to possess and operate electronic gambling devices during a licensed gaming event...The Department hereby suspends the charity gaming license of Joseph A. Bray Det. #471, Marine Corps League for one (1) year effective with the receipt of this decision." (Department's Exhibit #4).
- 12) The Petitioner received a letter dated June 24, 2003 accompanying its approved "Indiana Annual Bingo/Pull Tabs License Nbr. 100913." (Department's Exhibit #2).
- 13) The Petitioner's CG-13PT (Annual Bingo License / Pull Tabs, Tip Boards, and Punchboards Only) had an effective date of July 1, 2003 and an expiration date of June 30, 2004. The license number is 100913. (Department's Exhibit #1).
- 14) Petitioner's CG-13PT contains the name of the organization and its address and county. The form also states, "is hereby authorized by the State of Indiana to conduct a gaming event at 3006 N. 16th Street, Terre Haute, IN 47804." (Department's Exhibit #1).
- 15) The Petitioner's CG-13 (Annual Bingo License) had an effective date of July 1, 2003 and an expiration date of June 30, 2004. The license number is 100913. (Department's Exhibit #1).
- 16) Petitioner's Annual Bingo License contains the name of the organization and its address and county. The form also states, "is hereby authorized by the State of Indiana to conduct a gaming event at 7339 N. Clinton Road, Terre Haute, IN 47805-1328." (Department's Exhibit #1).
- 17) The Department has one form that is used for bingo and pull tabs. (Record at 24).
- 18) There are no provisions in the Indiana Code for a pull tab only license. (Record at 25).
- 19) The Department's witness stated at hearing, "[W]e don't have an application for just pull tabs only, because pull tabs only comes under annual bingo. That's why we have an annual bingo license. And in order to allow the organization to have pull tabs at one location, but to have their annual bingo at

another, we permitted them to use this annual bingo license application also for pull tabs indicating a different address for their pull tabs only.” (Record at 25).

- 20) When asked, “Now, does this organization sell pull tabs at their bingo operation, as well?” the Department’s witness stated, “They are entitled to, yes.” (Record at 25).

STATEMENT OF LAW

- 1) The Department’s hearings are governed by IC 4-21.5 exclusively. (See IC 4-32-8-5. *As added by P.L.188-2003, SEC.3.*).
- 2) Pursuant to 45 IAC 18-8-4, the burden of proving that the Department’s findings are incorrect rests with the individual or organization against which the department’s findings are made. The department’s investigation establishes a prima facie presumption of the validity of the department’s findings.
- 3) IC 4-21.5-3-25(b) provides in pertinent part, “The administrative law judge shall regulate the course of the proceedings in conformity with any prehearing order and in an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts...”
- 4) IC 4-21.5-2-26(a) states, “The administrative law judge may admit hearsay evidence. If not objected to, the hearsay evidence may form the basis for an order. However, if the evidence is properly objected to and does not fall within a recognized exemption to the hearsay rule, the resulting order may not be based solely upon the hearsay evidence.”
- 5) “It is reasonable...to adopt a preponderance of the evidence standard....” *Burke v. City of Anderson*, 612 N.E.2d 559, 565 (Ind.App. 1993).
- 6) 45 IAC 18-1-33, “‘Premises’ means a building or a distinct portion of a building where charity gaming is conducted. A portion of a building is considered distinct if it has a separate mailing address and is not connected by a common roof or wall with another structure where gaming activities occur.” (*Department of State Revenue; 45 IAC 18-1-33; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305*)
- 7) 45 IAC 18-1-38 provides, “Suspend. means that the qualified organization cannot conduct any gaming events or hold a license for a period of time specified by the department. The period of suspension begins at the time the organization receives notice from the department or when the organization exhausts all administrative remedies, whichever is later. (*Department of State Revenue; 45 IAC 18-1-38; filed Feb 28, 2003, 2:16 p.m.: 26 IR 2305*).
- 8) IC 4-32-8-1 states, “ IC 6-8.1 applies to the department's decision making process under this article, except that a formal protest of any decision, intended decision, or other action must be filed not more than seventy-two (72) hours after receipt of the notice of decision, intended decision, or other action.”

- 9) IC 4-32-9-1 provides, “A qualified organization may conduct the following activities in accordance with this article:
 - (1) A bingo event.
 - (2) A charity game night.
 - (3) A raffle event.
 - (4) A door prize event.
 - (5) A festival.
 - (6) The sale of pull tabs, punchboards, and tip boards.”
- 10) IC 4-32-9-2 states, “Except as provided in section 3 of this chapter, a qualified organization must obtain a license from the department to conduct an allowable event.”
- 11) IC 4-32-9-11 states, “A bingo license or special bingo license may also authorize a qualified organization to conduct door prize drawings and sell pull tabs, punchboards, and tip boards at the bingo event.
 - (b) A charity game night license may also authorize a qualified organization to conduct door prize drawings and sell pull tabs, punchboards, and tip boards at the charity game night.
 - (c) A raffle license may also authorize a qualified organization to conduct door prize drawings and sell pull tabs, punchboards, and tip boards at the raffle event.
 - (d) A door prize license may also authorize a qualified organization to sell pull tabs, punchboards, and tip boards at the door prize event.”
- 12) 45 IAC 18-2-4(c) states, “A qualified organization may hold more than one (1) license at the same time.”
- 13) IC 4-32-12-1(a) provides in pertinent part, “The Department may suspend or revoke the license or levy a civil penalty against a qualified organization or an individual under this article for any of the following:
 - (1) Violation of a provision of this article or of a rule of the department...”
- 14) IC 4-32-12-2 states, “The department may impose upon a qualified organization or an individual the following civil penalties:
 - (1) Not more than one thousand dollars (\$1,000) for the first violation.
 - (2) Not more than two thousand five hundred dollars (\$2,500) for the second violation.
 - (3) Not more than five thousand dollars (\$5,000) for each additional violation.”
- 15) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
 - (1) Suspend or revoke the license.
 - (2) Lengthen a period of suspension of the license.
 - (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.
 - (4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

- 1) According to IC 4-32-9-11, a bingo license or special bingo license may also authorize a qualified organization to conduct door prize drawings and sell pull tabs, punchboards, and tip boards at the bingo event.
- 2) It is questionable as to whether a licensed qualified organization can play bingo and sell pull tabs, punchboards and tip boards at one location three times a week, and then sell pull tabs, punchboards or tip boards at another location seven days a week. A literal reading of IC 4-32-9-11 may prohibit such a practice.
- 3) The Department's letter dated December 15, 2003 delivered to Petitioner's location where it sold pull tabs only and where the violation took place met the Department's notice requirements found in IC 6-8.1-5-1.
- 4) What is clear is that in Petitioner's case only one (1) license was issued, and that was License number 100913 and that is the license being suspended.

PROPOSED DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Petitioner's appeal is denied. Petitioner's license number 100913 is suspended and therefore, they are unable to conduct charity gaming for a period of one (1) year from the date of this decision.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue, a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

Bruce R. Kolb / Administrative Law Judge